

Hearing Date and Time: June 18, 2015 at 2:00 p.m.

Objection Date and Time: June 11, 2015 at 4:00 p.m.

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE

LEHMAN BROTHERS HOLDINGS INC., *ET AL.*,

Debtors.

CHAPTER 11 CASE NO. 08-13555 (JMP)

(Jointly Administered)

**AFFIDAVIT OF DONALD F. HIGGINS IN CONNECTION WITH THE MOTION  
PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY  
PROCEDURE AND SECTION 105(a) OF THE BANKRUPTCY CODE FOR  
APPROVAL OF SETTLEMENT AGREEMENT RELATING TO AIRLIE LCDO I  
(AVIV LCDO 2006-3) CREDIT DEFAULT SWAP AGREEMENT AND INDENTURE**

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I, Donald F. Higgins, being first duly sworn on oath, and under penalties of perjury as provided for under the Federal Rules of Civil Procedure, depose and state as follows:

1. I am presently employed by U.S. Bank National Association as a Vice President in our Corporate Trust Services Group based in our Boston, Massachusetts, offices located at One Federal Street, Third Floor, Boston, Massachusetts 02110. U.S. Bank National Association serves as Indenture Trustee ("*U.S. Bank*" or the "*Trustee*") under the terms of that Indenture, dated as of November 1, 2006, by and between Airlie LCDO I (Aviv LCDO 2006-3), Ltd. as Issuer, Airlie LCDO I (Aviv LCDO 2006-3), Corp., as Co-Issuer and U.S. Bank National Association, as Trustee (collectively, the "*Indenture*," and the issuer of notes under the Indenture, the "*Issuer*").

2. In my capacity at U.S. Bank, as Trustee, I have responsibility for administering the Indenture. Based on my own experiences and after review of the Trustee's business records, I have personal knowledge of the facts stated in this Affidavit and am competent to testify to these facts if called to do so. Capitalized terms not defined herein shall have the meaning ascribed in the Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Section 105(a) of the Bankruptcy Code for Approval of Settlement Agreement Relating to Airlie LCDO I (Aviv LCDO 2006-3) Credit Default Swap Agreement and Indenture (the "*Settlement Motion*") [ECF No. 49703].

3. After Lehman Brothers Holdings Inc. ("*LBHI*") and Lehman Brothers Special Financing Inc. ("*LBSF*" and with LBHI, the "*Debtors*") filed for bankruptcy on September 15, 2008, and October 3, 2008, respectively (the "*Bankruptcy Proceedings*"), the Trustee sent out numerous notices to holders of notes ("*Holders*") issued by the Issuer under the

Airlie LCDO I transaction (the "*Transaction*") and other parties, and had related conference calls and other communications with Holders, to inform them, and solicit their directions, in respect to certain developments, issues and other matters concerning the Transaction and Bankruptcy Proceedings.

4. The notes issued under the Indenture are generally held in "street name," meaning that the notes themselves are registered in the name of Cede & Company as the nominee for The Depository Trust Company ("*DTC*") as the Holder, on behalf of the beneficial holders of such notes. Each of the Notices (as defined below) provided by the Trustee to Holders for the Transaction and other parties was transmitted to DTC with instructions to forward the notice to beneficial holders. Upon information and belief, DTC posted the Notices on its electronic bulletin board for beneficial holders to view.

5. The Trustee also sent applicable Notices for the Transaction to all Holders of notes in physical or certificated form listed on the Trustee's registered holders list for the Transaction by U.S. mail, postage pre-paid, to the physical address listed therein.

6. In addition, with assistance of others in my office, the Notices were posted on the Trustee's investor reporting website (<http://www.usbank.com/abs>), which provides Holders with access to certain information relating to the Indenture and the trust established thereby.

7. In the period from approximately October 15, 2008, through and including March 4, 2010, the Trustee sent at least sixteen (16) notices to Holders and other parties (among other communications) (the "*First Sixteen Notices*") in an attempt to inform Holders on a variety of issues relating to the Transaction, as follows:

- (i) Informational Notice from the Trustee to the Holders (and certain other parties named therein) dated October 15, 2008;
- (ii) Event of Default Notice from the Trustee to the Holders (and certain other parties named therein) dated October 21, 2008;
- (iii) Informational Notice from the Trustee to the Holders (and certain other parties named therein) dated December 5, 2008;
- (iv) Event of Default Notice from the Trustee to the Holders (and certain other parties named therein) dated January 19, 2009;
- (v) Notice to Holders (and certain other parties named therein) of Invitation to Participate in Conference Call dated February 23, 2009;
- (vi) Notice to Holders Regarding Receipt of Notice of Termination of Lehman Brothers ABS Enhanced LIBOR Fund dated March 11, 2009;
- (vii) Request for Direction Regarding Proposal from Credit Swap Counterparty from the Trustee to the Holders (and certain other parties named therein) dated March 27, 2009;
- (viii) Request for Direction Regarding Notice of Termination of Lehman Brothers ABS Enhanced LIBOR Fund from the Trustee to the Holders in each Transaction (and certain other parties named therein) dated March 27, 2009;
- (ix) Notice from the Trustee to Holders (and certain other parties named therein) of Invitation to Participate in Conference Call dated April 22, 2009;
- (x) Request for Direction Regarding Replacement Investment Manager of Lehman Brothers ABS Enhanced LIBOR Fund from the Trustee to the Holders (and certain other parties named therein) dated May 6, 2009, and the Supplement thereto dated May 8, 2009;
- (xi) Notice from the Trustee entitled "Invitation to Noteholders to Participate in Conference Call" dated May 11, 2009;

- (xii) Notice of Responses to Request for Direction Regarding Replacement of the Investment Manager of Lehman Brothers ABS Enhanced LIBOR Fund from the Trustee to the Holders (and certain other parties named therein) dated June 4, 2009;
- (xiii) Notice to Holders (and certain other parties named therein) Regarding Notice of Certain Developments dated September 22, 2009;
- (xiv) Notice to Holders (and certain other parties named therein) Regarding Notice of Change in Management of TCW Asset Management Company and Update on the Replacement of Neuberger Berman Fixed Income LLC as the Manager of the Lehman Brothers ABS Enhanced LIBOR Fund (the 'LIBOR Fund') with TCW Asset Management Company dated December 29, 2009;
- (xv) Notice to Holders (and certain other parties named therein) Regarding Notice of Motion to Replace Neuberger Berman Fixed Income LLC as the Manager of the Lehman Brothers ABS Enhanced LIBOR Fund (the 'LIBOR Fund') with TCW Asset Management Company dated February 1, 2010; and
- (xvi) Notice to Holders (and certain other parties named therein) Regarding Notice of Certain Developments and Invitation to Holders to Participate in Conference Call dated March 4, 2010.

8. On or about April 20, 2010, the Trustee received Derivatives ADR Notice No. 157 with respect to the swap transaction between the Issuer and LBSF executed concurrently with the Indenture, under which a response and participation in subsequent mediation proceedings was mandatory. As required by the ADR Procedures Order, the Trustee sent a notice to Holders in the Transaction and other parties on or about May 3, 2010, entitled *Notice to the Holders of Notes Issued by Airlie LCDO (Aviv LCDO 2006-3), Ltd.*, seeking direction and input from Holders with respect to the resolution of the applicable swap transaction (the

"*Seventeenth Notice*"). A true and correct copy of the Seventeenth Notice for the Transaction is attached hereto as *Exhibit A*.

9. Notice of the receipt of ADR Notice No. 157 was also published by the Trustee three times in May 2011 in the Wall Street Journal and Financial Times (the "*Published Notices*"). True and correct copies of the Published Notices are attached hereto as *Exhibit B*.

10. On or about June 28, 2010, the Trustee sent an additional notice to Holders in the Transaction, again seeking input with respect to the resolution of the relevant swap transaction (the "*Eighteenth Notice*"). That notice for the Transaction provided in pertinent part:

Lehman Brothers Holdings Inc. ("LBHI") filed a voluntary petition seeking relief under Chapter 11 of 11 U.S.C. § 101 et seq. (the 'Bankruptcy Code') on September 15, 2008. LBSF filed a voluntary petition under the Bankruptcy Code on October 3, 2008. Both of these proceedings are pending in the United States Bankruptcy Court for the Southern District of New York and are consolidated for administrative purposes under Case No. 08-13555. The Honorable James M. Peck presides over the proceedings. Information with respect to those proceedings may be found at <http://www.Lehman-Docket.com>.

As reported in our Notice dated May 3, 2010, the Indenture Trustee received an ADR Notice dated April 19, 2010 demanding a payment by the Issuer to LBSF in the amount of **\$REDACTED**, consisting of **\$REDACTED** in a termination payment plus **\$REDACTED** in interest thereon. A copy of the ADR Notice is attached as Exhibit C to the May 3, 2010 Notice and has been posted on the Indenture Trustee's website at <http://www.usbank.com/abs>. The Indenture Trustee filed a response to the ADR Notice on June 4, 2010, a copy of which is attached hereto as Exhibit B. The Indenture Trustee received the Reply from LBSF on June 18, 2010 stating, inter alia, that the matter was appropriate for mediation. A copy of the Reply is attached hereto as Exhibit C. As of this date, mediation has not been scheduled.

Pursuant to Section 5(b) of the ADR Order, the Indenture Trustee is again (a) providing you notice that LBSF made a demand for a termination payment plus interest thereon, (b) seeking the identity of all Noteholders in order to facilitate participation of Noteholders in the Derivatives ADR Procedures (as defined in the ADR Order) and to facilitate direct communications with LBSF regarding these matters, and (c) seeking direction and instruction from the Noteholders with respect to participation by the Indenture Trustee in the Derivative ADR Procedures. Further, as required by the ADR Order, the Indenture Trustee (a) invites you to participate in the Derivatives ADR Procedures as an alternative to litigation, (b) encourages you to communicate directly with the Debtors, and (c) consistent with Indenture and applicable law, offers to take your direction with regard to the ADR Notice. Contacts for LBSF and its counsel may be found in the Reply.

**The Indenture Trustee needs your input and direction with respect to the mediation. In order to facilitate participation, communication, direction and instruction in connection with the ADR Procedures, please complete a Certificate of Beneficial Interest in the form attached hereto as Exhibit A and return it to the Indenture Trustee at your earliest possible convenience.**

(Emphasis in original). A true and correct copy of the Eighteenth Notice for the Transaction is attached hereto as *Exhibit C*.

11. Thereafter, the Trustee sent subsequent notices to Holders in the Transaction to schedule conference calls with them to discuss the mediation and the mediation process generally, among other issues, as follows:

- (i) Notice to Holders (and certain other parties named therein) Regarding Invitation to a Conference Call on August 18, 2010 at 1:00 PM EDT, 10:00 PDT, dated August 4, 2010 (the "*Nineteenth Notice*"); and
- (ii) Notice to Holders (and certain other parties named therein) Regarding Invitation to Conference Call on October 28, 2010, at 3:00 p.m. EDT, 12:00 noon PDT, dated October 19, 2010 (the "*Twentieth Notice*").

The conference calls were held as scheduled on August 18, 2010 and October 28, 2010. Holders for the Transaction that participated in the conference calls were provided with an update of the Bankruptcy Proceedings as the proceedings relate to the Transaction, advised about the mediations generally, informed that mediation would likely be scheduled for the Transaction and invited to participate in the mediation process.

12. On September 14, 2010, LBSF initiated litigation with respect to the relevant swap transaction for the Transaction. The Trustee sent an additional notice to Holders in the Transaction and other parties on or about September 29, 2010, entitled *Notice of the Institution of Litigation by Lehman Brothers Special Financing Inc.*, in which the Trustee provided notice of the litigation (the “*Twenty-First Notice*”).

13. On November 24, 2010, the Debtors filed a motion seeking to alter certain procedures for settling claims involving special purpose vehicle counterparties (the “*SPV ADR Motion*”). Thereafter, the Trustee sent an additional notice to Holders in the Transaction on or about December 31, 2010, entitled *Notice to Noteholders and/or Certificateholders of the Transactions and Their Corresponding CUSIPs Listed on Exhibit A*, which informed Holders of the SPV ADR Motion and that the Trustee had filed an objection thereto (the “*Twenty-Second Notice*”). A true and correct copy of the Twenty-Second Notice is attached hereto as *Exhibit D*.

14. The Trustee sent a subsequent notice to Holders in the Transaction on or about April 4, 2011, entitled *Notice to Noteholders and/or Certificateholders (the “Securityholders”) of the Transactions and Their Corresponding CUSIPs Listed on Exhibit A*, in which the Trustee indicated that it was essential that one or more Holders or holders of certificates for the Transaction be present to represent the Transaction in the applicable mediation with LBSF (the



*"Twenty-Third Notice"*). A true and correct copy of the Twenty-Third Notice is attached hereto as *Exhibit E*.

15. Thereafter, the Trustee sent additional notices to Holders in the Transaction and other parties regarding the scheduling of a hearing on the Debtors' disclosure statement (the *"Twenty-Fourth Notice"*) and with respect to the payment of unpaid fees and expenses of various service providers and others, including the Trustee and the government of the Cayman Islands (the *"Twenty-Fifth Notice"*).

16. The Trustee sent a subsequent notice to Holders in the Transaction and other parties on or about August 18, 2011, entitled *Notice of Initiation of Mediation Proceedings*, informing them that the Debtors had initiated mediation proceedings with respect to the Transaction, and seeking input from Holders with respect to the Trustee's participation (the *"Twenty-Sixth Notice"*). A true and correct copy of the Twenty-Sixth Notice is attached hereto as *Exhibit F*.

17. The Trustee send a subsequent notice to Holders in the Transaction and other parties on or about December 14, 2011, entitled *Notice to Retain Possession of Certificates and of Obligations under any Note Purchase Agreement*, informing Holders that the Transaction was scheduled to mature on December 22, 2011 and requesting that holders retain their respective securities with respect to the Transactions until such time as the litigation with LBSF has been resolves and final distributions made (the *"Twenty-Seventh Notice"*).

18. On or about October 15, 2012, the Trustee received a Letter, dated October 15, 2012, entitled *Letter of Direction - Distributions to Noteholders* (*"Letter of*

*Direction*”), from LBSF, as Majority Holder of the Notes, duly directing the Trustee to enter into that certain Termination Agreement, dated as of October 15, 2012. The Trustee entered into such agreement on or about October 15, 2012, under which the Trustee continues to holds certain amounts in escrow for the benefit of Holders of the remaining Notes not owned by LBSF.

19. Thereafter, the Trustee sent an additional notice to Holders and other parties on or about June 25, 2012, entitled *Notice to the Holders*, informing them that the Trustee had been asked to identify the beneficial holders of the Class D Notes to facilitate settlement discussions in connection with the amount and priority of the termination payment due LBSF (the “*Twenty-Eighth Notice*”).


20. On or about May 20, 2015, the Debtors and the Trustee subsequently reached agreement for settlement of remaining claims for the Transaction (the “*Settlement Agreement*”) and the Debtors filed the Motion.

21. The Trustee provided notice to Holders in the Transaction and other parties on or about June 5, 2015, entitled *Notice to Holders*, advising them of the Trustee’s and LBSF’s agreement for settlement of claims in the Transaction, informing Holders of the Motion and the terms of the settlement agreement, and providing them with information as to how to object in the event they disagreed with the settlement (the “*Twenty-Ninth Notice*,” and, collectively, with the First Sixteen Notices and the Seventeenth through Twenty-Eight Notice, the “*Notices*”). A true and correct copy of the Twenty-Ninth Notice is attached hereto as *Exhibit G*.

22. I am not aware of any formal or informal objection of a Holder in the Transaction to the Settlement Offer or Motion as of the date of this affidavit.

*[Remainder of the Page Intentionally Left Blank]*

FURTHER AFFIANT SAYETH NOT.

  
Donald F. Higgins

Subscribed and sworn to before me  
this 14 day of June 2015.

By   
Notary Public

My Commission Expires: \_\_\_\_\_

